

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

KEVIN J PEREZ,

Plaintiff,

Case No. 22-cv-0805-bhl

v.

OFFICER WLATERS, et al,

Defendants.

ORDER

On July 13, 2022, Plaintiff Kevin J. Perez, proceeding without counsel, filed a complaint and a motion for leave to proceed without prepayment of the filing fee. (ECF Nos. 1 & 2). The Court has authority to allow a litigant to proceed without prepaying the filing fee if the Court determines that the litigant is unable to pay the costs of commencing the action and the action is not frivolous, fails to state a claim, or is brought against an immune defendant. *Cf.* 28 U.S.C. §1915(a)(1), (e)(2).

With respect to his indigency, Perez's motion indicates that he is unemployed and only receives income from donating plasma for which he receives \$120 per week. (ECF No. 2 at 1-2). The motion further states that Perez has a 2001 GMC Sierra valued at approximately \$1,000. (ECF No. 2 at 3). Perez also alleges that he is responsible for monthly payments of rent (\$400 per month), credit cards (\$300), and child support (\$240). (ECF No. 2 at 2). On these facts, it appears that Perez is sufficiently indigent for a fee waiver.

The Court must also review the complaint for sufficiency. Under Fed. R. Civ. P. 8(a), a complaint must contain a "short and plain statement of the claim showing that the pleader is entitled to relief." Perez alleges that Defendants violated his civil rights by unlawfully arresting him and ignoring his request to invoke his 5th Amendment rights to stay silent and for an attorney. (ECF No. 1 at 2-3). The Court finds that Perez has pleaded enough facts to "give the defendant[s] fair notice of what the claim[s] [are] and the grounds upon which [they] rest." *Tamayo v. Blagojevich*, 526 F.3d 1074, 1083 (7th Cir. 2008) (quoting *Lang v. TCF Nat'l Bank*, 249 F. App'x

464, 466 (7th Cir. 2007)). Therefore, Perez's complaint is neither frivolous nor malicious and states arguable claims. As a result, he will be authorized to proceed with his case *in forma pauperis*.

Accordingly,

IT IS HEREBY ORDERED that Perez's motion for leave to proceed without prepayment of the filing fee (ECF No. 2) is **GRANTED**.

IT IS FURTHER ORDERED that, pursuant to Fed. R. Civ. P. 4(c)(3), the U.S. Marshals Service shall serve a copy of the complaint, waiver of service form and/or the summons, and this Order upon Defendants. Perez is advised that Congress required the U.S. Marshal's Service to charge for making or attempting such service. 28 U.S.C. §1921(b). The current fee for waiver of service packages is \$8 per item. 28 C.F.R. §0.114(a)(2). Congress has not made any provision for waiver of these service fees.

Perez is now required, under Fed. R. Civ. P. 5(a), to send a copy of every paper or document filed with the Court to the opposing parties or their attorneys. Perez should also retain a personal copy of each document. The Court may disregard any papers or documents which do not indicate that a copy has been sent to Defendants or their attorneys. Perez is further advised that his failure to make a timely submission, including notifying the Court of any changes in address, may result in the dismissal of this case for failure to prosecute under Civil L.R. 41.

IT IS FURTHER ORDERED that Defendants shall file a responsive pleading to the complaint within the time allowed under the Federal Rules of Civil Procedure.

Dated at Milwaukee, Wisconsin on September 15, 2022.

s/ Brett H. Ludwig
BRETT H. LUDWIG
United States District Judge